

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Thomas Gosier,)	C/A No. 3:09-931-JFA-JRM
)	
Petitioner,)	
v.)	ORDER
)	
Mary M. Mitchell, Warden,)	
)	
Respondent.)	
_____)	

Petitioner Willie Frazier, a federal prisoner¹ proceeding without assistance of counsel, seeks habeas corpus relief under 28 U.S.C. § 2241. Petitioner contends that the Bureau of Prisons (BOP) and the United States Probation Office have violated his constitutional due process rights and the Privacy Act because they have failed to correct the alleged misinformation contained in his Presentence Report (PSR). Essentially, petitioner seeks to have his PSR amended so that he can challenge his security classification and be housed in a lower security institution.

The Magistrate Judge assigned to this action² has prepared a thorough Report and Recommendation and opines that the respondent's motion to dismiss³ should be granted

¹ Petitioner is an inmate at the FCI-Edgefield in South Carolina serving a sentence of 210 months for conspiracy to possess crack cocaine with intent to distribute, imposed in the Middle District of Georgia.

² The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

³ An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

because this court lacks jurisdiction over Gosier's petition. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

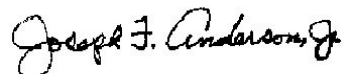
The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on January 27, 2010. Petitioner did not file timely objections to the Report. In fact, the copy of the Report and Recommendation mailed to the petitioner was returned by the U.S. Postmaster as undeliverable.

In his Report and Recommendation, the Magistrate Judge opines that petitioner's claims do not amount to a challenge to the execution of his sentence, thus depriving this court of jurisdiction under § 2241. Because petitioner is not in custody in violation of any law or the Constitution, § 2241 does not confer jurisdiction to this court. The Magistrate Judge further suggests that petitioner's claim under the Privacy Act, 5 U.S.C. § 552a, also fails because the Department of Justice has properly exempted the BOP's Inmate Central Record System from the Privacy Act's amendment requirements.

After a careful review of the record, the applicable law, the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper and incorporates the Report herein by reference. The respondent's motion to dismiss under Fed.R.Civ.P. 12(b)(6) is hereby granted and the petition is denied.

IT IS SO ORDERED.

February 18, 2010
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge